

A LEGACY OF AUTHORITARIANISM

A Dossier on the
Maldivian Judiciary

Preamble

“The legacy of an authoritarian past, in which the President was also the supreme judicial authority, has tested the [democratic] transition”

– International Commission of Jurists, 2011

The Maldives’ first, democratic Constitution was enacted in 2008. The Constitution has enabled the country to make substantial progress in consolidating democracy and safeguarding the fundamental human rights of its citizens. The Maldives held free and fair, multi-party elections for the president (2008), parliament (2009) and local councils (2011). Since the 2008 elections, the country has made good progress in media freedoms, has allowed space for a strong and vibrant civil society to grow, and has established new social protection programmes, creating a social safety net for all Maldivians.

However, opposition parties associated with the former regime have used their majority in parliament (the People’s Majlis), to ensure that the judiciary has remained largely unchanged. The judiciary, in practice, continues to operate in accordance with old laws and customs, and most of today’s sitting judges were handpicked by former President Gayoom before the enactment of the 2008 Constitution.

The Government of Maldives contends that the Maldivian judiciary is, in effect, systematically corrupt because its decisions are unduly influenced by members of the former regime. Moreover, the government contends that all the lower court judges (judges excluding the Supreme Court and Higher Court) were sworn in against the letter and spirit of the Constitution. As such, judges are often grossly under-qualified, have previous criminal convictions, and are of dubious moral character.

Judges like Abdulla Mohamed, Chief Judge at the Criminal Court, shield members of the former regime from the numerous cases of corruption, embezzlement and human rights abuses pending against them. This includes corruption cases that have been filed against six opposition members of the People’s Majlis, including the Deputy Speaker of Parliament and the minority leader, and cases filed against family members of sitting MPs.

These same judges also stand accused of deliberately undermining the Maldives Police Service’s ability to uphold law and order by persistently and unlawfully interfering with the police’s ability to apprehend, question

and build cases against people accused of committing serious and often violent crimes. The Government of Maldives contends that certain judges, because of corruption or political bias, are deliberately acting to undermine the stability of the new democratic order.

Furthermore, judges are deliberately obstructing the smooth functioning of the government and the implementation of government policies and decisions. For instance, the judiciary has acted in a partisan and unfair manner to block government initiatives. At the same time, judges have consistently ruled favourably towards wealthy politicians and businessmen.

The government is also deeply concerned over a number of Supreme Court decisions that have undermined the Constitution, eroded the checks and balances of the State and prevented the proper functioning of judicial watchdog bodies such as the Judicial Services Commission.

Lastly, and not directly connected with the problems inherent in the judiciary, the government is worried enough to mention in this report about the behaviour of many of the country's leading opposition figures, who, in the past few months, have taken to whipping up Islamic extremism, using hate speech, encouraging xenophobia and inciting violence against the government and the security forces.

Section 1 : Democratic Consolidation since 2008

“Maldives will increasingly have a special role to play in the region and the Muslim world as it has pioneered a democratisation process that is both modern and Islamic... This opportunity cannot be missed...”

– Navi Pillay, United Nations High Commissioner for Human Rights, 24 November 2011

The current Constitution was enacted on 7 August 2008, envisioning a modern democratic country, with a presidential system of government, the separation of powers and safeguards to protect fundamental rights and liberties. Since this new Constitution was enacted, the Maldives has made good progress to consolidate and deepen democracy and freedoms.

The country's first, ever multi-party presidential elections were held in October 2008. No candidate won 50% of the vote in the first round held on 8 October, so the two candidates with the most votes, President Gayoom (40% of first round votes, Dhivehi Rayyithunge Party, DRP) and Mohamed Nasheed (25% of first round votes, Maldivian Democratic Party, MDP), entered a second round on 28 October. Mohamed Nasheed won the second round, gaining 54% of the votes. 87% of eligible voters turned out to cast their ballots and international observer missions from the European Union and Commonwealth labeled the elections largely free and fair.

On 9 May 2009, the Maldives held its first, ever multi-party parliamentary elections, as required under the new Constitution. The ruling MDP won 31% of the popular vote but under the first-past-the-post system, only 26 seats. The DRP won 25% of the vote and 28 seats, with the remaining seats for the 77 member unicameral legislature won by smaller parties or independent candidates. The DRP formed an alliance with smaller parties and independents to give them a majority in the People's Majlis (parliament). Observer missions from the EU, Commonwealth, UN, and local NGOs judged the elections as largely free and fair.

On 5 February 2011, the Maldives held its first, ever multi-party local council elections, as required under the Constitution and following the enactment of the Decentralization Act (Act 7/2010) which devolved an

unprecedented amount of administrative and budgetary authority from Male' to the local islands. The ruling MDP won approximately 44% of the popular vote, including 9 out of the 11 council seats in Male', home to 1/3 of the country's citizens, and every council seat in the population centres of Addu City and Kulhudhuffushi. The opposition DRP won approximately 40% of the popular vote, winning a majority of seats in many smaller island communities outside the major population centres. Independent observers judged the elections largely free and fair.

Over the past three years, the Maldives has also witnessed significant improvements in fundamental liberties. Civil society has flourished and the Maldives is now home to hundreds of NGOs, specializing in issues ranging from corruption and the treatment of prison inmates, to environmental protection and religion. A number of high profile NGOs focused on service delivery have become prominent in the public life of the country. The past three years has also witnessed the growth, and increased freedom and daring, of artistic communities and the new profusion of art exhibitions, music shows and cultural performances.

The country's media landscape has also changed beyond recognition, with a profusion of dozens of print, broadcast and internet news channels and private blogs established. In 2009, the government decriminalized defamation and according to press freedom watchdog Reporters Without Borders (RWB), Maldivian journalists now enjoy freedoms comparable to their peers in established democracies. The 2007, the Maldives was ranked 129 out of 169 countries in RWB's annual survey of media freedom, and former President Gayoom was labeled a 'predator of press freedom'. In 2009 and 2010, though, the Maldives was ranked 51 and 52 respectively. In 2011, however, the country fell back to 73 place, although this is still the strongest position of any country in South Asia. RWB blamed the drop on a "growing culture of religious intolerance" pervading in the country; a concern the government shares and which is documented in Section 4 of this dossier. While the overall picture on media freedom has improved significantly over the past three years, the government remains deeply concerned over an increase in media bias, at times verging on propaganda, among private broadcasters owned by opposition politicians and businessmen.

Despite all of the above progress on the consolidation of democracy, however, one area that has witnessed scant improvement is the judiciary. The judiciary, despite the best efforts of the Executive to encourage reform, continues to resemble the autocratic, unjust and corrupt system that has plagued the Maldives for generations.

In large part, the lack of improvements in the judiciary can be traced to the opposition majority in the People's Majlis. Numerous senior officials of the former regime, many of whom face charges of corruption and embezzlement, used their wealth and influence to win seats in the 2009 parliamentary elections. These MPs have used their votes in parliament to prevent judicial reform and maintain the judicial status quo.

In 2011, after a series of opposition splits and defections, the MDP became the largest party in the People's Majlis and today commands the loyalty of some 34 MPs. Nevertheless, opposition parliamentarians are still able to secure a small majority in votes related to judicial reform and have managed to block change.

Section 2: Constitutional Background & the Appointment of Today's Judges

"To have a sudden change, where suddenly judges are independent – this can't just be signed on a piece of paper or constitution, it's an attitude and a practice. I think it's safe to say we don't have those attitudes and practices in the Maldives."

– International Commission of Jurists. 2011

The 1997 Constitution explicitly placed ultimate judiciary authority in the hands of the President, who was 'highest authority of administering justice in the Maldives.' The President, through his Minister for Justice, appointed all judges, regulated all appeals, could remove judges at will and could grant pardons and commute sentences.

The new, 2008 Constitution aimed to create a clear separation of powers between the Judiciary, Executive and the Legislature and envisaged a modern, competent and independent judiciary in line with a modern democracy. However, in practice very little has changed and the vast majority of the judges currently sitting on the bench today are the same people, with the same political loyalties, appointed by former President Gayoom before the enactment of the 2008 Constitution.

A NEW SUPREME COURT

Article 141 of the 2008 Constitution established the Supreme Court as the highest authority for administering justice in the country and provided a transitional period of two years. The transitional provisions chapter of the Constitution conferred interim arrangements for the Judiciary. An interim Supreme Court was established consisting of five Justices. This arrangement was to remain in place until the establishment of the Supreme Court as provided under article 145 of the Constitution. The number of justices of the Supreme Court must be

specified in a law passed by the People's Majlis to enable the proper formation of the Supreme Court. Article 149(d) of the Constitution requires the enactment of this Judges Act. Two months before the end of the transition period, on 8 June 2010, and prior to the passing of a law relating to judges, the interim Supreme Court sent a letter to the President stating that the interim Justices would remain permanently on the bench, securing their tenure, although there was no legal procedure for such an action under the Constitution or any other law. This self proclamation in the absence of an enacted law specifically mentioned in article 149(d) of the Constitution, forced the President to declare the Supreme Court bench defunct on 7 August 2010.

In response to the closure of the Supreme Court, the Majlis passed the law required by article 149(d), the Judges Act, on 10 August 2010. The same day, the President ratified the Act, and the Supreme Court was immediately open and functioning. This was followed by the appointment of seven judges to the Supreme Court, including the Chief Justice as prescribed by the Judges Act, and in accordance with the procedure in article 148 of the Constitution.

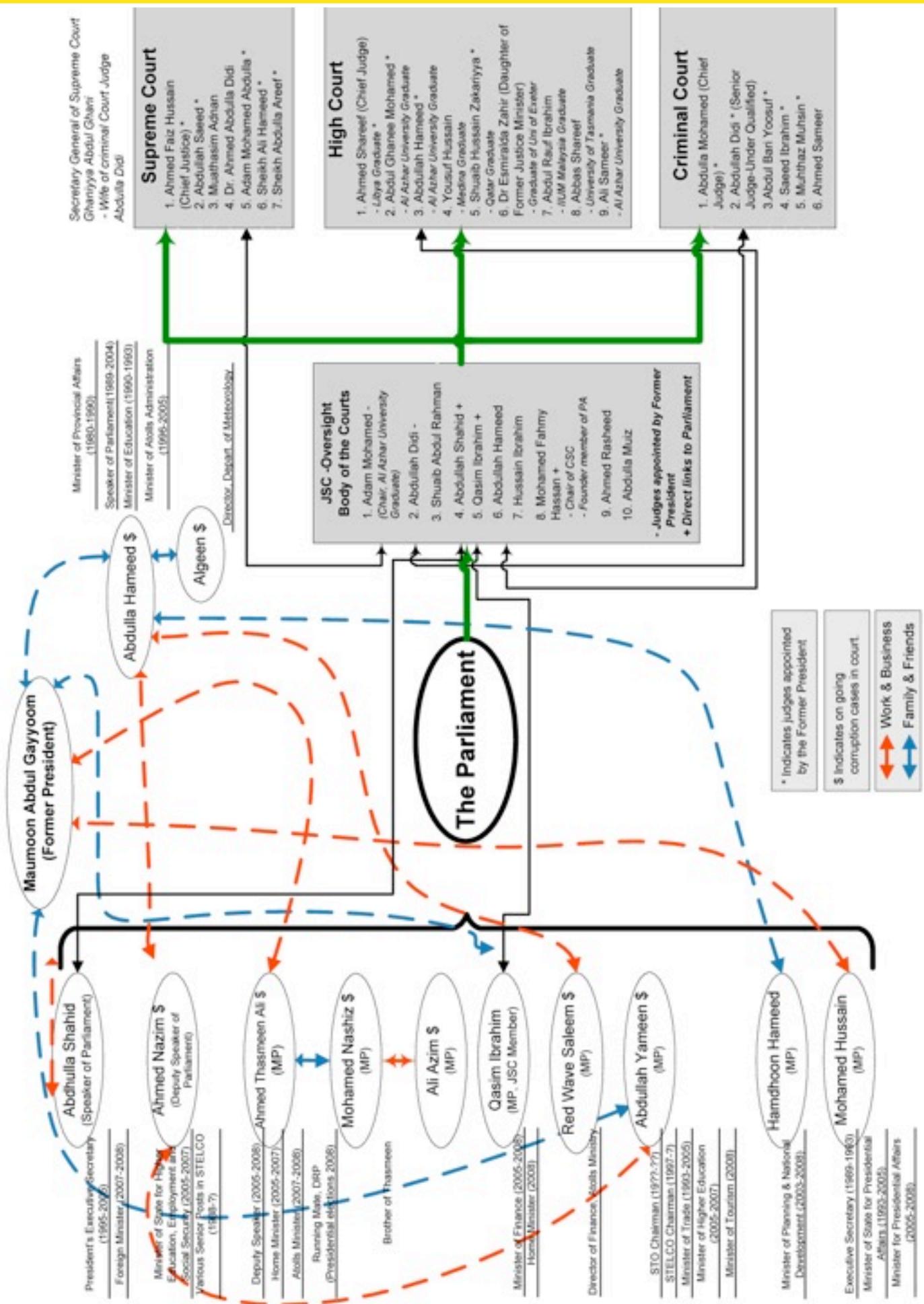
HOW THE OLD LOWER COURT JUDGES BECAME THE NEW

The Judicial Service Commission (JSC), established under article 157 of the Constitution, is responsible for the appointment, promotion and transfer of judges other than the Chief Justice and judges of the Supreme Court, making recommendations to the President on the appointment of the Chief Justice and judges of the Supreme Court; and to investigate complaints about the Judiciary, and to take disciplinary action against them, including recommendations for dismissal. Article 285 of the Constitution states that all judges serving on 7 August 2008 were to remain in office for a maximum period of two years. Article 149 of the Constitution says that JSC must appoint judges as provided by law, inferring the existence of an enacted law for that purpose. The JSC was required to determine by 7 August 2010 whether the serving judges met the criteria provided in article 149 of the Constitution according to a law relating to the Judges, passed by the People's Majlis.

However, before such a law could be passed, the JSC published an Evaluation Criteria for the judges. In the same month, the President sent a letter to the JSC raising public concerns over the low standards set out in the Evaluation Criteria, and requesting the JSC to review the Criteria. The President also raised concerns over a number of sitting judges who had been found guilty of misconduct, judges who had pending cases against them, and judges under criminal investigation.

However, disregarding the issues raised in the letter from the President, the JSC went ahead with an oath taking ceremony for all the serving judges on 6 and 7 August 2010, which was held behind closed doors while members of the public staged an angry protest outside the court. With this oath taking ceremony, the JSC instated them as permanent judges.

Although the Constitutional situation of the Supreme Court has been rectified by the actions of the President and the Majlis on 10 August 2010, the Constitutional concerns over the re-instatement of the judges of the lower courts remain unresolved.



Section 3: The Behaviour of the Current Judges

“How often do ordinary Maldivians look to the courts for justice? Is there a sense that ‘We [Maldivians] have an independent judiciary that is capable of resolving problems?’ I think the answer is no”

– International Commission of Jurists, 2011

A. JUDGES SHIELD SERVING MPs AND MEMBERS OF THE FORMER REGIME

The government contends that elements within the current judiciary, in effect, shield opposition MPs, as well as the former President, his family and allies, from ever facing justice. Listed below are cases against opposition members of the People’s Majlis, their family members and senior members of the former regime. None of the cases have been concluded or brought to sentencing.

1. ABDULLA HAMEED – FATHER OF MP HAMDHOON HAMEED AND BROTHER OF FORMER PRESIDENT GAYOOM; 2. AHMED NAZIM MP - DEPUTY SPEAKER OF PARLIAMENT, CLOSE ASSOCIATE OF ABDULLA YAMEEN MP (SEE CASE BELOW); 3. 'REDWAVE' AHMED SALEEM MP - CLOSE ASSOCIATE OF ABDULLA YAMEEN MP;

At a press conference in August 2009, Maldives Police Service said police had uncovered evidence that implicated former Atolls Minister Abdullah Hameed, MP Ahmed “Redwave” Saleem, former Director of Ministry of Finance and Treasury, and MP Ahmed Nazim, current Deputy Speaker of Parliament in fraudulent transactions worth over US\$260,000 (Mrf 3,446,950).

Police exhibited numerous quotations, agreements, tender documents, receipts, bank statements and forged cheques proving that MP Nazim received over US\$400,000 in the scam. A hard disk seized during a raid of MP

Nazim's office in May allegedly contained copies of forged documents and phony letterheads. Police maintain that money was channeled through the scam to MP Nazim who laundered cash through Namira Engineering and other unregistered companies.

Police further alleged that MP Saleem actively assisted the scam in his then-position as Director of Ministry of Finance and Treasury, while MP Nazim's wife Zeenath Abdullah had abused her position as a manager of the Bank of Maldives' Villingili branch to deposit proceeds of the fraudulent conspiracy. Police said Hameed, brother of former President Maumoon Abdul Gayoom, played a key role in the fraud by awarding bids without public announcements, making advance payments using cheques in breach of state asset and finance regulations, approving bid documents for unregistered companies and discriminatory treatment of bid applicants.

4. ALGEEN ABDUL GAYOOM - BROTHER OF ABDULLA YAMEEN MP AND UNCLE OF HAMDHOON HAMEED MP, HALF BROTHER OF FORMER PRESIDENT GAYOOM;

Abdulla Algeen has been charged with corruption after being accused of embezzling US\$175,000 of Japanese funding from the Department of Meteorology (DOM), where he held the position of Director. Algeen allegedly sent three separate invoices to the Japan Agency for Marine-Earth Science and Technology (JAMSTEC) between May 2006 and April 2007 on behalf of DOM. All three invoices demanded payment to Mr Algeen's personal Bank of Maldives account.

5. AHMED THASMEEN ALI MP, MINORITY LEADER OF THE PEOPLE'S MAJLIS, LEADER OF DHIVEHI RAYYITHUNGE PARTY, FORMER PRESIDENT GAYOOM'S RUNNING MATE IN 2008 PRESIDENTIAL ELECTION; 6. MOHAMED NASHIZ MP, MEMBER OF THE DHIVEHI RAYYITHUNGE PARTY, AHMED THASMEEN ALI'S BROTHER; 7. ALI AZIM MP, MEMBER OF THE DHIVEHI RAYYITHUNGE PARTY;

In January 2009, the then Auditor General Ibrahim Naeem, in the audit report of the national bank, Bank of Maldives PLC (BML), warned that defaults on bank loans issued to influential political players could jeopardise the entire financial system of the country. Over 60 per cent of the US\$633 million worth of loans issued in 2008 was granted to 12 parties, the report noted. According to the report, US\$45 million was granted to Sultans of the Seas Pvt. Ltd. and US\$36 million to Fonnadhoo Tuna Products Pvt. Ltd., two loans which comprised 13 per cent of the total loans issued in 2008. The report noted that Fonnadhoo was owned by current DRP Leader Ahmed Thasmeen Ali – running mate of former President Maumoon Abdul Gayoom in the 2008 presidential election – while the owners of Sultans of the Seas were closely associated with the minority leader. In September 2009, Maldives Customs filed a case at Civil Court to recover US\$8.5 million from Sultans of the Seas in unpaid duties and fines for allegedly defrauding customs to import two luxury yachts. In February 2010, the court ordered the company to pay Rf110 million (US\$7 million) as fines and evaded import duties.

Furthermore, in October 2011, the High Court upheld a Civil Court verdict ordering Mahandhoo Investments and Kabalifaru Investments – two companies with ties to Ahmed Thasmeen Ali – to repay millions of dollars worth of loans to BML. DRP MP Mohamed Nashiz, managing director of Kabaalifaru, and DRP MP Ali Azim, a loan guarantor, were among the appellants at the High Court. Both MPs had signed 'joint and several guarantee and indemnity' agreements for the loans issued in mid-2008. In the first case involving Mahandhoo Investments, BML had issued a US\$23.5 million demand loan, a US\$103,200 bank guarantee and US\$30,090 letter of credit on July 10, 2008. The second case meanwhile involved a US\$3.3 million loan issued to Kabaalifaru Investment and the appeal of a Civil Court verdict on September 30, 2009 ordering the company to settle the debt in the next 12 months.

8. ABDULLA YAMEEN ABDUL GAYOOM MP- SENIOR MEMBER OF PROGRESSIVE PARTY OF THE MALDIVES (PPM); BROTHER OF FORMER PRESIDENT GAYOOM;

MP Abdulla Yameen Abdul Gayoom is under investigation by Singapore Police and the Maldives Presidential Commission (mandated by President Nasheed to investigate embezzlement and misappropriation of state funds during the previous regime) for involvement in an alleged US\$800million illegal oil trade with the Burmese junta when he was chairman of the State Trading Organisation in the mid 2000s. He is believed to be the key player in an illegal scheme to buy subsidised oil through STO's branch in Singapore and sell it through a joint venture called 'Mocom Trading' to the Burmese military junta, at a black market premium price.

9. ISTHAFA IBRAHIM MANIKU, FORMER DIRECTOR-GENERAL OF THE MINISTRY OF DEFENCE AND IN CHARGE OF THE PRISON'S DIVISION DURING THE PREVIOUS REGIME.

Isthafa was arrested by police in May 2011, as part of an investigation into allegations of torture, cruel and degrading treatment and the murder and disappearances of inmates, during former President Gayoom's administration. During the police investigation, however, the High Court over turned lower court ruling allowing the police a further 15 days to question Isthafa and he was released.

Prosecutor General's Office, has said at the time that Isthafa still has connections to the staff and those in charge of the Prisons Department. Prosecutor General's Office noted that during the investigations Isthafa provided information regarding a missing Department of Penitentiary and Rehabilitation Service file, which is believed to contain details of human rights abuses and the perpetrators of human rights abuses.

B. ALLEGATIONS AGAINST ABDULLA MOHAMED, CHIEF JUDGE OF THE CRIMINAL COURT

In July 2005 the then Attorney-General, Hassan Saeed, wrote to former President Maumoon Abdul Gayoom, to raise serious concerns about the conduct of Chief Judge of the Criminal Court Abdulla Mohamed. The allegations contained in the letter included:

1. That during criminal court hearing in 2005 (Case number 464/JC/2005, 6 June 2005), Judge Mohamed had advised the defendant: "You should not run after a woman who does not love you. It is stated in the Holy Quran that woman are very deceptive".
2. That during another criminal case in June 2005 (Case 698/2005/JC/433, 19 May 2005), Judge Mohamed had acquitted the defendant even though the defendant had admitted to having committed the crime, stating that there was no case against the accused.
3. That in a sexual abuse case in May 2005 (689/2005/JC/433, 19 May 2005), Judge Mohamed made the two children who were summoned as witnesses against the accused to stand at the front of the court and look at the people present in the court. He then made the children identify the accused and to confirm the indecent act that they had been accused of. Finally he asked the children act out the indecent act that the defendant was accused of, in the presence of the perpetrator and the rest of the court.

After the election of the current government in 2009, documents were sent to the judicial oversight body, the Judicial Service Commission (JSC), requesting the JSC to launch an investigation into outstanding complaints against Chief Judge Abdulla Mohamed for obstructing a police investigation against bribery and corruption within Parliament.

The Criminal Court sent a suspension order to two of the most experienced and senior most lawyers at the Police; Inspector Mohamed Riyaz of Special Investigations and Superintendent Mohamed Jinah, Head of Drug Enforcement Unit, after they advocated before the court on behalf of the Police during remand hearings concerning deputy Speaker of Parliament, MP Ahmed Nazim (accused of corruption and embezzlement, close ally of the former President Gayoom). They were informed, in a letter from the Criminal Court that they were suspended from appearing before the court for a period of 6 months, and no reason for their suspension has been given to date, despite repeated requests. This unprecedented move was clearly outside of the powers of Judge Mohamed or the Criminal Court.

The Attorney General appealed to the High Court on the issue, which even after the end of the 6 months period, HC has still decided on the appeal.

The Maldives Police Service has also complained that Judge Mohamed often refuses to issue search warrants for corruption cases involving associates of the former President or former members of President Gayoom's

government; and of leaking evidence to the defense lawyers of prominent political allies of the former President such as MPs Abdulla Yameen and Gasim Ibrahim, who were also being investigated for corruption.

JUDGE ABDULLA AND THE JUDICIAL SERVICES COMMISSION

In 2009, the President's Office requested the JSC to investigate the Chief Judge Abdulla Mohamed's reasons for refusing to issue a court order for a police search and seizure operation at the Bank of Maldives, during an investigation into their 2007 audit report, as well as other complaints and allegations against the judge for ethical misconduct. In the report later released by the JSC, it was stated that cases that preceded the formation of the JSC in 2008 could not be investigated. Regarding the refusal to issue the court order, the report declared the judge was within his rights to refuse the court order, as in the absence of Banking Laws, only the Anti-Corruption Commission can look into corruption allegations regarding bank employees.

In January 2010, a case against Abdulla Mohamed was once again presented to the JSC, this time by former President's member of the JSC, Aishath Velezinee, after Abdulla Mohamed appeared on private network DhiTV and expressed "biased political views". Supreme Court Judge Adam Mohamed, a member of the JSC, also stated that Abdullah Mohamed was in violation of the Judge's Code of Conduct in making controversial political statements on local television.

In November 2011, The JSC completed its investigation, deciding that Judge Mohamed had indeed been guilty of misconduct. The JSC gave him 30 days to reply to the report after which a decision would be made regarding whether or not to forward the matter to the Parliament. During this time, Judge Mohamed's allies in the Civil Court order that the JSC's complaint procedure be suspended. Although the JSC have appealed the Civil Court's ruling, the JSC allowed Judge Mohamed to continue to serve as Chief Judge of the Criminal Court. With the credibility of the judicial system at stake, and following a public outcry, President Nasheed intervened and removed Judge Mohamed from the Criminal Court.

C. UNDERMINING THE RULE OF LAW AND PREVENTING THE POLICE FROM DISCHARGING THEIR DUTY

According to the Maldives Police Service (MPS) elements within the judiciary are deliberately undermining the Maldives Police Service's ability to uphold law and order by persistently and unlawfully interfering with the police's ability to apprehend, question and build cases against people accused of committing serious and often violent crimes.

Please see below a précis of a MPS report detailing their frustrations with the Criminal Court.

INVESTIGATION STAGE

obtaining court orders

- Excessive delays in making decisions for police requests for court orders for investigative purposes.
 - In some cases after submission of the police request for the court order, three to four days delays occur before a decision is reached on the court order.
- Procedural inconsistency in issuing court orders.
 - Sometimes, the administrative staffs after accepting the application form for the court order from the police, handover the court decision on the court order to the police.
 - On other circumstances, the police officers are summoned to the court hearing and questioned prior to a decision being made on the court order.
 - On other instances, the administrative staffs refuse to accept the application for the court order.
- Having to disclose details of all evidence that police have gathered. As a result, the person under investigation becomes aware of the evidence already gathered and is able to manipulate police investigations, destroy evidence and exercise undue influence on potential witnesses.
- For certain types of investigations, police having to submit evidence sufficient to prove the case.
- On major cases related to bribery and corruption, the court refused to make the necessary court orders to facilitate obtaining of detailed information related to the relevant bank accounts.
 - Given the high standards placed on evidentiary requirements, difficulties exist in obtaining court orders, despite the existence of sufficient reasons implicating the suspect of having committed the crime. This hinders the investigation process and ultimately results in the case failing. Since investigation enables police to gather evidence, a court order is required to facilitate the investigation process, and a failure to obtain a court order impedes the investigation process and results in the case failing.
 - Police investigation officers being repeatedly questioned by the judges during custody extension hearings, on matters involving personal interests of some of the judges.

PROBLEMS ASSOCIATED IN REQUESTING FOR EXTENSION FOR CUSTODY

- Application of different standards depending on the person held in police custody

- Releasing of suspects in custody and changing custodial location of suspects on the courts own initiative.
- Whilst one judge has issued a court order granting custody of a suspect, another judge may summon the suspect within the same custodial period to the court and may issue an order releasing the suspect.
- Differential standards being applied to persons brought to the court on similar issues on the same day.
 - As such, in relation to the persons arrested following the civil unrest which occurred in the area between the Supreme Court and H. Endhigas, when M, Endherimaage, Ghassan Maumoon and another three suspects were brought before the court, the court issued a release order on Ghassan Maumoon on the grounds that he was arrested in breach of the laws without a court order after the crime had been committed. However, the court decided that the other persons arrested on the same day following the same unrest were lawfully detained and issued court orders extending their custody.
- When granting bail, the court is releasing people arrested on suspicion of committing dangerous crimes without sufficient consideration of the interests of the public – for example, releasing such people on the grounds that the Prosecutor-General had not filed the case against the accused. Suspects released on these grounds repeatedly commit dangerous crimes causing damage to the society.
 - As such, due to a delay in obtaining a document required from the Health Ministry, the court released a dangerous criminal, M.Cozy, Ibrahim Shahum Adam on the 17th of February 2011, merely on the basis of holding the Health Minister accountable. One month after the release, Shahum Adam was taken into police custody on the 17th of March 2011 following an intentional killing of another person in association with some others.
- Granting short extension periods so as to hinder the investigation process. For example when only two or three days are granted, due to the nature of the case and number of people involved, conducting the investigation and gathering of evidence is obstructed.
- Magistrates of certain courts are not making decisions according to the law – for example, magistrates in the courts outside Male’ are refusing to accept police requests for court orders, or the magistrates are not opening the court for one reason or another. In addition to this, the Magistrate courts do not follow the precedence set by Higher Courts when deciding on similar issues.
 - As such, whilst the Supreme Court decision 19 and 20 of 2012 and High Court ruling 278/HC/2011 had specified the circumstances under which a court order is required and circumstances under which a court order is not required for arrest on grounds of sufficient reasons of a person committing a criminal act under article 46, releasing suspects saying that they were arrested in

breach of the Constitution, where the arrest was made without a court order in circumstances other than on the act of committing the crime or were arrested at the scene of crime.

- For an example; When an arrest of a suspect was made on the basis of sufficient grounds to believe that he had committed the crime following an investigation in relation to the theft of Rufiyaa 18 million from the Bank of Maldives, the suspect was released, after being summoned to court on the courts own initiative, prior to the suspect being brought before the court within the 24 hour limitation period. When the suspect was released on the grounds that the arrest was arbitrary and in breach of the Constitution, he fled Maldives and went abroad. The release of the suspect facilitated others associated with this case to destroy evidence and to hide the money involved.
- At the initial stage of investigations, courts are holding hearings open to the public. As a result, people associated with the case are given the opportunity to destroy evidence and foil police investigations.
 - When the persons arrested for investigation are brought before the court within 24 hours to determine the legitimacy of the arrest and to determine the extension of custody, when people are allowed into the court hearing without a screening process, other people associated with the case are enabled to gain information on the evidence proposed by the investigation authorities before the court, giving them the advantage of disposing evidence relevant to the investigation and enabling them to influence important witnesses involved in the case.
- The courts are summoning people arrested on suspicion of committing a crime before the expiry of the 24 hour arrest limit, by sending a letter of summons to the police, and then proceeding with the arrest extension procedures. This practice is prevalent in certain types of cases.
 - As such, when ordinary people raise complaints on such issues, they are told that a decision will be made when the suspect is brought before the court for the extension of custody. But where the issue relates to politicians and political party leaders, court orders summoning suspects to court are made even at midnight and the decision of extending custody are taken, without giving the police sufficient time to prepare the case for making a submission to court to determine lawful detention and request for extension of custody.
- When making decisions on the arrests, there is inconsistent application and interpretation of relevant laws and the rulings of higher courts.
- When making decisions on extending an arrest period where the suspect has admitted committing the offence, the court refuses to accept that confession on the grounds that it was not made before a magistrate.
- Sending letters to police demanding police change the location of a person under arrest, or ordering the suspect's immediate release from custody before the custodial period is over.

TRIAL STAGE

- In general, excessively long times in completing a trial. Due to this, criminal offenders have more opportunity to commit further crimes or continue committing the same offence. There is also loss of evidence, loss of investigative momentum and opportunities for the accused to find ways to put undue pressure on victims and witness to change their statements.
- Refusal to conduct court proceedings on certain issues.
- Inconsistency in the consideration of evidence by the courts.
- During trial hearings, defence lawyers use denigrating language when referring to the police and gratuitously abuse them. These lawyers refer to the President and other government officials in the same way. The courts allow such behaviour during trial hearings.

OTHER RELATED ISSUES

- Police complaints regarding magistrates and judges made to the Judicial Service Commission are being ignored.
- The behaviour of certain judges raises questions about their judicial ethics and integrity
- The police appeal case regarding the suspension of certain police lawyers, submitted to the High Court in 2010, is yet to be finalised. The police are yet to receive a reply to a letter to Criminal Court requesting the reason for the suspension of police lawyers.
- Cases are being filed by private individuals against police officers regarding their work in official investigations. Individual officers are being prosecuted as individuals and are being denied legal representation from the police service. The courts are accepting such cases and proceeding with them without any input from the police service.
- Certain judges are using constitutional judicial independence and privileges for grandstanding and gratuitous exhibitions of power.
- Individual judges are using their own procedural rules in relation to court proceedings. The entire court procedural system has lost its legal basis and has fallen into a state of disorder.
- Some judges lack the competence to understand and consider the procedures and practices and standards of free and fair democracies of the world – which is a fundamental principle of the constitution.

- Judges are not familiar with legal principles and concepts encompassed in the newly enacted laws.
- Contrary to the principle of separation of powers, the courts are ordering the police to investigate certain matters and demanding to have those matters in court for trial.
- Granting permission for dangerous criminals in custody to leave abroad.
- Allowing dangerous criminals in custody to be moved into house arrest through authorisation letters, and summoning to court while court hearings are on going and releasing the suspects.

D. UNDERMINING THE CONSTITUTION AND SEPARATION OF POWERS

The government is deeply concerned over the decisions by the courts that undermine the constitution and separation of powers:

1. USURPING POWERS NOT GRANTED TO THE COURTS UNDER THE CONSTITUTION.

The Judicial Service Commission (JSC), which functions as the watch dog of the judiciary, has been largely defunct due to the political lenience and influence of its members. Moreover, the Supreme Court has further acted to erode the JSC's powers and authorities. For instance, the Supreme Court has issued rulings to the effect that the Department of Judicial Administration (DJA) must be under the supervision and authority of the Supreme Court, effectively taking upon itself the monitoring functions of the judicial administration previously being exercised by the JSC in accordance with the Judicial Service Commission Act. Furthermore, the Supreme Court has declared the establishment of the Judicial Council in accordance with the Judicature Act to be in contravention with the Constitution, and affirmed the functions being exercised by the Judicial Council to be within the mandate of the Supreme Court. This impedes the check and balance system within the judiciary as the monitoring mechanism has been brought in-house, making it impossible for the Supreme Court to look into its own issues without being subject to inevitable bias.

2. NOT PROVIDING LEGAL REMEDY

In one of many instances, the Supreme Court, "in the name of public interest litigation," took over a case filed at the Civil Court that challenged the validity of the JSC's process of vetting candidates to the High Court. The Supreme Court then delayed ruling on the case for over a month, and when the judge who filed the case was out of town, called for a hearing and dismissed the case without issuing a verdict.

3. LOCUS STANDI IN ADMINISTRATIVE ISSUES

The courts often allow members of the public, or political parties, to present cases against the government that do not concern them but as mere busy bodies.

4. THE SUPREME COURT MAKING DECISIONS WITHOUT A CASE BEING HEARD

The Supreme Court, on a number of times, has decided to make a ruling on an issue, without a relevant case being heard in court. For example.

SECTION 4: Hate Speech And Calls to Violence by Opposition Members

"The Jew's plan and way of thinking is to divide Islamic countries"

– Dhivehi Qaume Party (2011)

EXAMPLES OF RECENT STATEMENTS BY REPRESENTATIVES OF OPPOSITION POLITICAL PARTIES

DHIVEHI QAUMEE PARTY (DQP)

Earlier this month, the DQP (roughly translated as Maldives National Party), which is led by former Attorney-General under former President Gayoom's administration, Dr. Hassan Saeed, and former Justice Minister under Gayoom's Administration and former Minister of Civil Aviation and Telecommunications, Dr. Mohamed Jameel, produced a pamphlet attacking the policies of the current Government.

The Government has condemned the pamphlet, which promotes extremist thought and rhetoric.

Below are quotes from some of the main themes covered by the pamphlet:

"Nasheed's big plan is to undermine Maldivians' religion, introduce other religions into the country and encourage vice".

"When the Nasheed administration established diplomatic relations with the biggest enemy of Islam [Israel], the government agreed to change the school curriculum and teach our small children about the goodness of Jews." (Pamphlet page 7).

"The government accepted the responsibility of monitoring and reporting on the human rights situation in Iran. This task was assigned to Nasheed's former Foreign Minister Dr. Shaheed. There is no doubt that this was a

reward for the Nasheed administration's efforts to strengthen ties with the Jews and please the Jews.” (Page 20).

“The Jew's plan and way of thinking is to divide Islamic countries”.

Government officials are secret “Christian priests”.

The DQP goes on to attack other South Asian countries for gifting cultural monuments, which were displayed as part of official celebrations at the recent SAARC Summit in Addu City in the south of the Maldives.

The cultural monuments presented by the Maldives' SAARC partners as a gift ahead of the recent SAARC Summit are really “religious statues, depicting other Gods for praying [towards].” The pamphlet states that the statues are proof of President Nasheed's involvement in an international conspiracy to introduce other religions into the Maldives.

People who dance and women who wear skirts are “disrespectful towards Islam”.

Separately, Dr. Mohamed Jameel and another DQP official, ‘Sandaanu’ Ahmed Didi, appeared on DhiTV in January accused President Nasheed of being part of a Christian and Jewish conspiracy to undermine Islam in the Maldives.

ADHAALATH PARTY

Adhaalath Party (a religious party) President Sheik Imran said at an opposition rally on 23 December: “I came here putting my life at risk. I told my wife and kids that I would not mind dying for this cause. I am here to give freedom to future generations. God willing I will do this... When President Nasheed was in prison, he discussed changing government; to change religion in this country and to give wine to the people... If I die in this cause, I will die a martyr”.

COMMENTS REFERRING TO UN HIGH COMMISSIONER FOR HUMAN RIGHTS MS NAVI PILLAY

Following UN High Commissioner for Human Rights Ms Pillay's remarks in the Maldivian parliament to review the punishment of flogging, opposition protesters gathered near the UN building and some of them carried signboards with angry slogans, including “Ban UN” and “Flog Pillay”, and called on authorities to arrest the UN High Commissioner. One of the main demands of the 23 December protest led by the opposition on the government was for the President to publicly condemn Ms Pillay's remarks.

PROGRESSIVE PARTY OF THE MALDIVES (PPM)

PPM interim Vice President, Umar Naseer, speaking at an opposition rally on 23 January called on opposition supporters to “mobilize 2000 people in a surprise operation that will lead to mutiny by the security forces.”

Umar Naseer went on to outline the specifics of his plot to the crowd: “Groups of 30 people will gather in different places in a surprise operation; they will take 50, 12-foot ladders and jump over those walls [pointing figure towards MNDF Headquarters in Republic Square]; this should take 30 seconds; the Maldives National Defence Force will be forced to mobilize the whole security force; 2000 people jumping over those walls in a surprise operation will tire them and they will be forced to give up and they will side with us. We know how countries topple governments. Everything we need to topple this government is now ready.”

In the early morning of 30 January 2012, during an opposition protest, Umar Naseer armed fellow demonstrators with wooden sticks. We are “armed and ready with wooden clubs to defend ourselves,” he told local media.

Later in the early morning of 30 January, following a meeting with Vice President Waheed, Umar Naseer said “After these discussions we are now calling upon the nation’s security forces, on behalf of our ‘December 23 alliance’ of all the opposition parties in the country as well as the NGO coalition, to immediately pledge their allegiance to the Vice President... I repeat, all members of the December 23 alliance are now calling on the security forces to immediately pledge allegiance to Vice President Dr Mohamed Waheed Hassan Manik and, as Mohamed Nasheed has violated the constitution, to not obey any of his orders and to pledge allegiance to the Vice President.”

Abdulla Yameen MP, PPM, parliamentary group leader, told protesters during a rally on 23 January: “I’m here to join the people in this war, in this jihad!” Addressing nearby members of the police and military, who were guarding the rally, Yameen added: “we are making arrangements to find employment opportunities for those of you who are dismissed for disobeying to an unlawful command.”

Yameen added: “Why are do you [police and military] doing nothing when the airport was put in control of a foreign neighbor. Why have you not taken over the place? It is not the Maldivian people who have come to war with you. Are you able to oversee the security of our airport? The obstacle between a plane and its passengers is only a wire net. That is why I am saying we should not let Israeli planes to come here.” That is why we are saying we should not let foreigners to operate the airport, for security reasons”.

JUMHOOREE PARTY

On 3 February 2012, Dhiyana Saeed, former SAARC Secretary-General and former President Gayoom’s appointed member of parliament, and member of Jumhooree Party, called for the impeachment of President Nasheed.

At the rally, when someone from the crowd called for the President to be stoned to death, Dhiyana, who was addressing the crowd, shouted: “yes, yes! He should not only be impeached, he should also be stoned to death!”